

BEFORE THE IOWA DEPARTMENT OF REVENUE
HOOVER STATE OFFICE BUILDING
DES MOINES, IOWA

<p>IN THE MATTER OF</p> <p>IDA COUNTY, IOWA COMMUNITY HOSPITAL d/b/a HORN MEMORIAL HOSPITAL</p> <p>SALES AND USE TAX</p>	<p>REFUSAL TO ISSUE DECLARATORY ORDER</p> <p>DOCKET NO. 2019-300-2-0699</p>
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Pursuant to a Petition for Declaratory Order ("Petition") filed with the Iowa Department of Revenue ("Department") by Ida County, Iowa Community Hospital d/b/a Horn Memorial Hospital ("Horn Memorial" or "Petitioner") on October 21, 2019 and in accordance with Iowa Code section 17A.9 (2019) and Iowa Administrative Code rule 701—7.24(17A) (2019), "Declaratory order-in general," the Director issues the following order.

I. FACTS

The findings of fact are based upon the Petition. Horn Memorial is a nonprofit corporation which provides health care services in the Ida Grove, Iowa area through four facilities. Horn Memorial operates a hospital in Ida Grove ("Ida Grove Hospital") and three rural health clinics. One clinic is located across the street from the hospital ("Physician's Clinic"), the second is located in Mapleton ("Mapleton Clinic"), and the third is in Odebolt ("Odebolt Clinic"). Ida Grove Hospital is a critical access hospital¹ licensed pursuant to Iowa Code 135B.

¹ A "critical access hospital" is any hospital located in a rural area and certified by the Iowa [D]epartment of [P]ublic [H]ealth as being a necessary provider of health care services to residents of the area. A "critical access hospital" makes available 24-hour emergency care, is a designated

On September 20, 2018, Horn Memorial submitted refund requests to the Iowa Department of Revenue ("Department") requesting refunds of retail and local option sales tax paid from October 1, 2015 through September 30, 2018 for the hospital and the three clinics in the total amount of \$9,315.01.² On February 6, 2019, the Department of Revenue approved the refund request in part, finding Horn Memorial was eligible for a refund in the amount of \$5,138.02. This amount constituted Ida Grove Hospital's refund request plus applicable interest and excluded the refund requests for the three clinics. Horn Memorial did not contest the decision.

On or about October 21, 2019, Horn Memorial petitioned the Department of Revenue for a declaratory order. The Petition requested guidance on the classification of Horn Memorial's clinics under the Iowa Administrative Code, requested guidance on the applicability of an exemption from sales and use tax for purchases made by Horn Memorial for the three clinics under Iowa Code section 423.3(27), and asserted the Department erred in determining the section 423.3(27) exemption did not apply to the clinics.

II. ISSUES PRESENTED

Horn Memorial presents two issues for consideration:

- 1) Whether the Physician's, Mapleton, and Odebolt Clinics are "freestanding clinics" within the meaning of Iowa Administrative Code rule 701—18.59?
- 2) If the clinics are not "freestanding clinics" within the meaning of rule 701—18.59, do the purchases of goods and services for those clinics fall within the scope of the tax exemption under Iowa Code section 423.3(27)?

provider in a rural health network, and meets the criteria specified pursuant to 481—51.53.

Iowa Admin. Code r. 481—51.1(135B).

² \$5,027.43 for Ida Grove Hospital, \$2,804.33 for the Physician's Clinic, \$831.17 for the Mapleton Clinic, and \$652.08 for the Odebolt Clinic.

III. STANDARD OF REVIEW

A. Declaratory Orders under the Iowa Administrative Procedure Act

The function of a declaratory order is to provide "reliable advice from an agency as to the applicability of unclear law." Arthur Earl Bonfield, *The Iowa Administrative Procedure Act: Background, Construction, Applicability, Public Access to Agency Law, The Rulemaking Process*, 60 Iowa L. Rev. 731, 805 (1975). Iowa Code section 17A.9 contemplates declaratory orders by administrative agencies on a disclosed set of facts. *City of Des Moines v. P.E.R.B.*, 275 N.W.2d 753, 758 (Iowa 1979). A declaratory order enables the public to secure definitive binding advice as to the applicability of agency-enforced law to a particular set of facts. Bonfield, *supra*, at 822–23.

It is not the function of a declaratory order to resolve issues involving factual analysis "too complicated to handle outside of an actual adjudication." *Id.* at 807. A declaratory order is not a "contested case" as defined in Iowa Code section 17A.2(5); namely, it is not an evidentiary hearing, which is a separate administrative remedy set forth in Iowa Code chapter 17A and in the Department's rules. See Iowa Code § 17A.9, Iowa Admin. Code r. 701—7.24(17A). Consequently, for the purposes of any declaratory order, the Director views the issues raised in the petition as questions of law applicable to future factual situations as disclosed in the petition. This view is consistent with Iowa Administrative Code rule 701—7.24(17A) concerning the issuance of declaratory orders.

IV. RULING

For the reasons stated below, the Director refuses to issue a declaratory order in response to Horn Memorial's Petition. Pursuant to the Iowa Administrative Code, a

petition for a declaratory order must contain, among other things, “[t]he answers to the questions desired by the petitioner and a summary of the reasons urged by the petitioner in support of those answers.” Iowa Admin. Code r. 701—7.24(1)“b”(4)(17A). The Petition does not meet this requirement. While the Petition does identify the sections of the Iowa and Federal Code Horn Memorial requests the Department analyze in its determination of a tax exemption applicability for purchases made for Horn Memorial’s three clinics, the Petition fails to provide the particular factual circumstances as applied to these statutes. Absent this information, the Director is unable to adequately respond to the questions raised in the Petition.

Pursuant to Iowa Administrative Code rule 701—7.24(9), the Director therefore refuses to issue a declaratory order for the following reasons: (1) the petition does not substantially comply with Iowa Administrative Code rule 701—7.24(1), (2) “the petition does not contain facts sufficient to demonstrate that the petitioner will be aggrieved or adversely affected by the failure of the department to issue an order,” (3) “the facts presented in the petition are unclear, overbroad, insufficient, or otherwise inappropriate as a basis upon which to issue an order,” and (4) “the questions presented by the petition would more properly be resolved in a different type of proceeding,” specifically a contested case proceeding. Rather than being “based upon facts calculated to aid in the planning of future conduct,” the petition relies largely on information about prior refund denials. *Id.* r. 701—7.24(9)“a”(8)(17A). This could be construed as an effort to “challenge a department decision already made.” *Id.*

Parts of the Petition discuss the Department’s February 2, 2019 partial denial of Horn Memorial’s refund claim. Horn Memorial did not appeal that determination. Once

a taxpayer fails to timely appeal the denial of a refund that taxpayer cannot subsequently use a petition for declaratory order or duplicate refund claims to revive expired appeals. A taxpayer may only challenge a refund denial by appealing the denial within 60 days. See Iowa Code § 421.10. Such a taxpayer may, however, seek a refund for tax periods that have not been denied and that are not barred by the statute of limitations or otherwise barred by law.

Issued at Des Moines, Iowa this 12th day of March, 2020.

IOWA DEPARTMENT OF REVENUE

By 
Kraig Paulsen, Director

CERTIFICATE OF SERVICE

I certify that on this 12th day of March, 2020, I caused a true and correct copy of the Declaratory Order of the Director of Revenue to be forwarded by U.S. Mail to the following person:

Jesse D. Sitz
Baird Holm LLP
1700 Farnam Street
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Omaha, NE 68102-2068



Holly Welch, Executive Secretary
Iowa Department of Revenue